

UNITED STATES DISTRICT COURT

for the

Eastern District of Washington

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Nov 22, 2019

SEAN F. McAVOY, CLERK

United States of America

v.

MONICA PESINA

Defendant

Case No. 4:19-CR-06063-SMJ-1

ORDER OF DETENTION PENDING TRIAL

Part I - Eligibility for Detention

Upon the

- ☒ Motion of the Government attorney pursuant to 18 U.S.C. § 3142(f)(1), or
☐ Motion of the Government or Court's own motion pursuant to 18 U.S.C. § 3142(f)(2),

the Court held a detention hearing and found that detention is warranted. This order sets forth the Court's findings of fact and conclusions of law, as required by 18 U.S.C. § 3142(i), in addition to any other findings made at the hearing.

Part II - Findings of Fact and Law as to Presumptions under § 3142(e)

- ☐ **A. Rebuttable Presumption Arises Under 18 U.S.C. § 3142(e)(2)** (*previous violator*): There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of any other person and the community because the following conditions have been met:
- ☐ **(1)** the defendant is charged with one of the following crimes described in 18 U.S.C. § 3142(f)(1):
 - ☐ **(a)** a crime of violence, a violation of 18 U.S.C. § 1591, or an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed; **or**
 - ☐ **(b)** an offense for which the maximum sentence is life imprisonment or death; **or**
 - ☐ **(c)** an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46, U.S.C. (46 U.S.C. §§ 70501-70508); **or**
 - ☐ **(d)** any felony if such person has been convicted of two or more offenses described in subparagraphs (a) through (c) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (a) through (c) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; **or**
 - ☐ **(e)** any felony that is not otherwise a crime of violence but involves:
 - (i)** a minor victim; **(ii)** the possession of a firearm or destructive device (as defined in 18 U.S.C. § 921);
 - (iii)** any other dangerous weapon; or **(iv)** a failure to register under 18 U.S.C. § 2250; **and**
 - ☐ **(2)** the defendant has previously been convicted of a Federal offense that is described in 18 U.S.C. § 3142(f)(1), or of a State or local offense that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed; **and**
 - ☐ **(3)** the offense described in paragraph (2) above for which the defendant has been convicted was committed while the defendant was on release pending trial for a Federal, State, or local offense; **and**
 - ☐ **(4)** a period of not more than five years has elapsed since the date of conviction, or the release of the defendant from imprisonment, for the offense described in paragraph (2) above, whichever is later.

☒ **B. Rebuttable Presumption Arises Under 18 U.S.C. § 3142(e)(3)** (*narcotics, firearm, other offenses*): There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community because there is probable cause to believe that the defendant committed one or more of the following offenses:

- ☒ (1) an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46, U.S.C. (46 U.S.C. §§ 70501-70508);
- ☐ (2) an offense under 18 U.S.C. §§ 924(c), 956(a), or 2332b;
- ☐ (3) an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;
- ☐ (4) an offense under Chapter 77 of Title 18, U.S.C. (18 U.S.C. §§ 1581-1597) for which a maximum term of imprisonment of 20 years or more is prescribed; **or**
- ☐ (5) an offense involving a minor victim under 18 U.S.C. §§ 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425.

☒ **C. Conclusions Regarding Applicability of Any Presumption Established Above**

☒ The defendant has not introduced sufficient evidence to rebut the presumption above.

OR

☐ The defendant has presented evidence sufficient to rebut the presumption, but after considering the presumption and the other factors discussed below, detention is warranted.

Part III - Analysis and Statement of the Reasons for Detention

After considering the factors set forth in 18 U.S.C. § 3142(g) and the information presented at the detention hearing, the Court concludes that the defendant must be detained pending trial because the Government has proven:

- ☒ By clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community.
- ☒ By a preponderance of evidence that no condition or combination of conditions of release will reasonably assure the defendant's appearance as required.

In addition to any findings made on the record at the hearing, the reasons for detention include the following:

- ☒ Weight of evidence against the defendant is strong
- ☒ Subject to lengthy period of incarceration if convicted
- ☒ Prior criminal history
- ☐ Participation in criminal activity while on probation, parole, or supervision
- ☐ History of violence or use of weapons
- ☒ History of alcohol or substance abuse
- ☒ Lack of stable employment
- ☒ Lack of stable residence
- ☐ Lack of financially responsible sureties
- ☐ Lack of significant community or family ties to this district

- ☐ Significant family or other ties outside the United States
- ☐ Lack of legal status in the United States
- ☐ Subject to removal or deportation after serving any period of incarceration
- ☐ Prior failure to appear in court as ordered
- ☒ Prior attempt(s) to evade law enforcement
- ☐ Use of alias(es) or false documents
- ☐ Background information unknown or unverified
- ☐ Prior violations of probation, parole, or supervised release

OTHER REASONS OR FURTHER EXPLANATION:

Defendant is charged with possession with intent to distribute methamphetamine and heroin. The United States alleged that Defendant has been involved in a series of incidents with law enforcement beginning in June 2019, when she was stopped in a vehicle with her co-Defendant. The complaint alleges that a firearm was located on the co-Defendant and that \$27,000 cash, a substantial amount of methamphetamine and heroin, and drug-trafficking related items including a digital scale and ziploc bags were located in the vehicle. Thereafter, it was proffered that law enforcement searched Defendant's home in September 2019 and located similar evidence of drug trafficking, including substantial amounts of methamphetamine, fentanyl-laced pills, heroin, and marijuana and multiple firearms. It was alleged that Defendant, knowing a warrant had been issued for her arrest, hid in a friend's residence in Dixie, Washington in an effort to evade law enforcement. During a November 2019 search of the Dixie residence, it was proffered that law enforcement located both Defendants, two firearms, a substantial amount of narcotics, a scale, cell phones, and other evidence indicative of drug trafficking. These allegations are serious; the quantity and nature of the drugs involved, coupled with the presence of firearms on three separate occasions, are indicative of danger to the community. In addition, Defendant's attempt to evade law enforcement and the lengthy term of imprisonment she would face if convicted on these charges heightens the risk of nonappearance.

The weight of the evidence is the least important factor, but appears to be sufficiently strong to raise a concern regarding danger to the community and risk of nonappearance based on the United States' proffer, which included details gathered from lengthy investigations and evidence resulting from the execution of search warrants.

Defendant is 40 years old and was born in Walla Walla, Washington. She has lived in this District her entire life and has resided in the Tri-Cities area for the past 12 years. She has ties to the community. Her mother resides in Walla Walla and one of her siblings resides in Spokane; she has limited contact with them. She has three children, ages 22, 11, and 9, who resided with her prior to her arrest. Before that, her children resided with her sporadically, at times residing with their aunt (including for a period of five years). Defendant does not have stable employment and reports being self-employed for the past five years. She was evicted from her apartment on November 14, 2019. Defendant struggles with substance abuse; she obtained an evaluation and intensive outpatient treatment was recommended. She expressed willingness to engage in treatment and plans to reside in clean and sober housing if granted release. While the Court agrees that substance abuse must be addressed, it finds that it cannot safely grant her release on this record. Defendant's criminal history involves similar controlled substance violations (two prior convictions) and the Court notes that she has stated to family members that she will always be a drug dealer. The recent allegations of Defendant's participation in substantial narcotics trafficking, involving firearms and fentanyl-laced pills, despite two law enforcement interventions, combined with Defendant's efforts to hide from law enforcement give this Court insufficient assurance that Defendant will abide by any conditions it sets to ensure the safety of the community or her appearance at court proceedings. On balance, the Court finds that the presumption of detention has not been rebutted.

Part IV - Directions Regarding Detention

The defendant is remanded to the custody of the Attorney General or to the Attorney General's designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant must be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility must deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

Date: 11/22/2019

Mary K. Dimke

United States Magistrate Judge